

Mar 21, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JADE WILCOX on behalf of herself  
and all others similarly situation,

Plaintiff,

v.

JAMES CRAIG SWAPP,  
individually; and SWAPP LAW,  
PLLC, doing business as Craig Swapp  
and Associates,

Defendants.

NO: 2:17-CV-275-RMP

PROTECTIVE ORDER

**PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery in this action are likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The Stipulated Protective Order does not confer blanket protection on all disclosures or responses to discovery, the protection

1 it affords from public disclosure and use extends only to the limited information or  
2 items that are entitled to confidential treatment under the applicable legal principles.

3 2. “CONFIDENTIAL” MATERIAL

4 a. “Confidential” material shall include the following documents and  
5 tangible things produced or otherwise exchanged: documents containing  
6 information that is not publicly known and is of commercial value, documents  
7 containing sensitive personal information, or documents containing information  
8 required by law or agreement to be kept confidential. The parties agree that  
9 “Confidential” materials shall include but shall not be limited to, (1) Collision  
10 Reports obtained from the Washington State Patrol, containing any person’s  
11 photograph, social security number, driver identification number, name, address,  
12 telephone number, or date of birth; (2) documents that refer or relate to personal  
13 information obtained from Collision Reports, which can be used to identify an  
14 individual, including an individual’s photograph, social security number, driver  
15 identification number, name, address, telephone number, or date of birth; or (3)  
16 documents that reference any person’s or entity’s private financial information,  
17 including but not limited to bank account information, salary information, and  
18 information concerning business profits, revenues, and/or expenses.

19 3. SCOPE

20 The protections conferred by this agreement cover not only confidential  
21 material (as defined above), but also (1) any information copied or extracted from

1 confidential material; (2) all copies, excerpts, summaries, or compilations of  
2 confidential material; and (3) any testimony, conversations, or presentations by  
3 parties or their counsel that might reveal confidential material.

4 However, the protections conferred by this agreement do not cover  
5 information that is in the public domain or becomes part of the public domain  
6 through trial or otherwise.

#### 7 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

8 4.1 Basic Principles. A receiving party may use confidential material that  
9 is disclosed or produced by another party or by a non-party in connection with this  
10 case only for prosecuting, defending, or attempting to settle this litigation.  
11 Confidential material may be disclosed only to the categories of persons and under  
12 the conditions described in this agreement. Confidential material must be stored and  
13 maintained by a receiving party at a location and in a secure manner that ensures that  
14 access is limited to the persons authorized under this agreement.

15 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
16 otherwise ordered by the court or permitted in writing by the designating party, a  
17 receiving party may disclose Confidential material disclosed or produced by another  
18 party or by a non-party in connection with this case only for prosecuting, defending,  
19 or attempting to settle this litigation. Such Confidential material may be disclosed  
20 only to the categories of persons and under the conditions described in this Order.  
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1 When the litigation has been terminated, a receiving party must comply with the  
2 provisions of section 10 below.

3 Confidential material may be disclosed only to the following:

4 (a) the receiving party's counsel of record in this action, as well as  
5 employees of counsel to whom it is reasonably necessary to disclose the information  
6 for this litigation;

7 (b) the receiving party;

8 (c) experts and consultants to whom disclosure is reasonably  
9 necessary for this litigation and who have signed the "Acknowledgment and  
10 Agreement to Be Bound" (Exhibit A);

11 (d) the court, court personnel, and court reporters and their staff;

12 (e) service providers such as copy or imaging service providers  
13 retained by counsel to assist in the duplication of Confidential material, provided  
14 that counsel for the party retaining the copy or imaging service instructs the service  
15 not to disclose any Confidential material to third parties and to immediately return  
16 all originals and copies of any Confidential material;

17 (f) during their depositions, witnesses in the action to whom  
18 disclosure is reasonably necessary, including but not limited to witnesses who are  
19 current or former employees of the producing party (or non-party as the case may  
20 be), and witnesses who are identified as an author, recipient, or one who otherwise  
21 had access to or knowledge of the Confidential material prior to its production in

1 this action. Pages of transcribed deposition testimony or exhibits to depositions that  
2 reveal Confidential material must be so marked by the court reporter and may not be  
3 disclosed to anyone except as permitted under this agreement;

4 (g) the author or recipient of a document containing the information  
5 or a custodian or other person who otherwise possessed or knew the information.

6 4.3 Filing Confidential Material. Before filing Confidential material or  
7 discussing or referencing such material in court filings, the filing party shall confer  
8 with the designating party to determine whether the designating party will remove  
9 the confidential designation, or whether the document can be redacted. It is  
10 understood that upon the entry of the Stipulated Protective Order, the Court's  
11 *Procedures for the Filing of Sealed and Ex Parte Documents For Civil Cases*  
12 (8/26/15 Rev.)<sup>1</sup> shall apply, except that service of sealed documents shall be made  
13 via email rather than in paper.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.  
16 Each party or non-party that designates information or items for protection under  
17 this agreement must take care to limit any such designation to specific material that

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19 <sup>1</sup>

20 [http://www.waed.uscourts.gov/sites/default/files/electronic\\_how/Sealed%20Handout%20for%20Civil%20Cases-20150827.pdf](http://www.waed.uscourts.gov/sites/default/files/electronic_how/Sealed%20Handout%20for%20Civil%20Cases-20150827.pdf)  
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1 qualifies under the appropriate standards. The designating party must designate for  
2 protection only those parts of material, documents, items, or oral or written  
3 communications that qualify, so that other portions of the material, documents,  
4 items, or communications for which protection is not warranted are not swept  
5 unjustifiably within the ambit of this agreement.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations  
7 that are shown to be clearly unjustified or that have been made for an improper  
8 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or  
9 to impose unnecessary expenses and burdens on other parties) expose the  
10 designating party to sanctions.

11 If it comes to a designating party's attention that information or items that it  
12 designated for protection do not qualify for protection, the designating party must  
13 promptly notify all other parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in  
15 this agreement, or as otherwise stipulated or ordered, disclosure or discovery  
16 material that qualifies for protection under this agreement must be clearly so  
17 designated before or when the material is disclosed or produced.

18 (a) Information in documentary form (*e.g.*, paper or electronic  
19 documents and deposition exhibits, but excluding transcripts of depositions or other  
20 pretrial or trial proceedings): The designating party must affix the word  
21 "CONFIDENTIAL" to each page that contains confidential material. If only a



1 portion or portions of the material on a page qualifies for protection, the producing  
2 party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
3 markings in the margins). A party or non-party that makes original documents or  
4 materials available for inspection need not designate them for protection until after  
5 the inspecting Party has indicated which material it would like copied and produced.  
6 During the inspection and before the designation, all of the material made available  
7 for inspection shall be deemed "CONFIDENTIAL." After the inspecting party has  
8 identified the documents it wants copied and produced, the producing party must  
9 determine which documents, or portions thereof, qualify for protection under this  
10 Order. Then, before producing the specified documents, the producing party must  
11 affix the "CONFIDENTIAL" legend to each page that contains Confidential  
12 material.

13 (b) Testimony given in deposition or in other pretrial proceedings:

14 The parties and any participating non-parties must identify on the record, during the  
15 deposition or other pretrial proceeding, all protected testimony, without prejudice to  
16 their right to so designate other testimony after reviewing the transcript. Any party  
17 or non-party may, within fifteen days after receiving the transcript of the deposition  
18 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,  
19 as confidential. The notice of designation must designate those specific portions of  
20 the testimony by page and line that the designating party designates as Confidential  
21 material. If a party states on the record that the deposition may include some

1 Confidential material, then that deposition shall be treated as Confidential material  
2 in its entirety until the expiration of 14 days following the delivery of the final  
3 transcript to all parties.

4 If a party or non-party desires to protect Confidential information at  
5 trial, the issue should be addressed during the pre-trial conference.

6 (c) Other tangible items: The producing party must affix in a  
7 prominent place on the exterior of the container or containers in which the  
8 information or item is stored the word "CONFIDENTIAL." If only a portion or  
9 portions of the information or item warrant protection, the producing party, to the  
10 extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate  
12 qualified information or items does not, standing alone, waive the designating  
13 party's right to secure protection under this agreement for such material. Upon  
14 timely correction of a designation and to the extent reasonably feasible, the receiving  
15 party must make reasonable efforts to ensure that confidential material, which is the  
16 possession, custody or control of the receiving party, is treated in accordance with  
17 the provisions of this agreement.

## 18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any party or non-party may challenge a  
20 designation of confidentiality at any time. Unless a prompt challenge to a  
21 designating party's confidentiality designation is necessary to avoid foreseeable,



1 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
2 delay of the litigation, a party does not waive its right to challenge a confidentiality  
3 designation by electing not to mount a challenge promptly after the original  
4 designation is disclosed.

5       6.2 Meet and Confer. The parties must make every attempt to resolve any  
6 dispute regarding confidentiality designations without court involvement. Any  
7 motion regarding confidentiality designations must include a certification, in the  
8 motion or in a declaration or affidavit, that the movant has met and conferred in good  
9 faith with other affected parties in an effort to resolve the dispute without court  
10 action. The certification must list the date, manner, and participants to the  
11 conference. A good faith effort to confer requires a face-to-face meeting or a  
12 telephone conference.

13       6.3 Judicial Intervention. If the parties cannot resolve a challenge without  
14 court intervention, the designating party may file and serve a motion to retain  
15 confidentiality. The burden of persuasion in any such motion shall be on the  
16 designating party. Frivolous challenges, and those made for an improper purpose  
17 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may  
18 expose the challenging party to sanctions. All parties shall continue to maintain the  
19 material in question as confidential until the court rules on the challenge.

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1     7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
2     IN OTHER LITIGATION

3             If a party is served with a subpoena or a court order issued in other litigation  
4     that compels disclosure of any information or items designated in this action as  
5     “CONFIDENTIAL,” that party must:

6             (a)     promptly notify the designating party (or non-party, as the case  
7     may be) in writing and include a copy of the subpoena or court order;

8             (b)     promptly notify in writing the party who caused the subpoena or  
9     order to issue in the other litigation that some or all of the material covered by the  
10    subpoena or order is subject to this Stipulated Protective Order, including a copy of  
11    this Order as part of the notification; and

12            (c)     cooperate with respect to all reasonable procedures sought to be  
13    pursued by the designating party whose Confidential material may be affected.

14            If the designating party seeks a protective order within 10 days of receiving  
15    notice of the subpoena, the party served with the subpoena or court order shall not  
16    produce any information designated in this action as "CONFIDENTIAL" before a  
17    determination by a court with authority to grant a protective order, unless the party  
18    has obtained the designating party's permission. The designating party shall bear the  
19    burden and expense of seeking protection in that court of its Confidential material  
20    and nothing in these provisions should be construed as authorizing or encouraging a  
21    receiving party in this action to disobey a lawful directive from another court.

1     8.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2             If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
3 Confidential material to any person or in any circumstance not authorized under this  
4 agreement, the receiving party must immediately (a) notify in writing the designating  
5 party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
6 unauthorized copies of the protected material, (c) inform the person or persons to  
7 whom unauthorized disclosures were made of all the terms of this agreement, and  
8 (d) request that such person or persons execute the “Acknowledgment and  
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10    9.     INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
11 PROTECTED MATERIAL

12             (a)    In the absence of agreement by the receiving party and the  
13 producing party that Paragraph 9(b) will apply, the inadvertent production of  
14 material in this litigation for which a producing party subsequently gives notice to  
15 receiving parties is subject to a claim of privilege or other protection, will governed  
16 by Federal Rule of Civil Procedure 26(b)(5)(B) and Federal Rule of Evidence 502.  
17 Upon receipt of any notice to the receiving party that identifies the document(s) or  
18 information mistakenly produced, the receiving party will promptly comply with the  
19 procedures set forth in Rule 26(b)(5)(B) of the Federal Rules of Civil Procedure.

20             (b)    Consistent with comments to Rule 502(d) of the Federal Rules  
21 of Evidence, the producing party and receiving party can agree that certain specified



1 material (documents or ESI) can be produced to allow production without prior  
2 privilege review for certain ESI and “claw-back” and “quick peek” arrangements as  
3 a way to avoid the excessive costs of pre-production review for privilege and work  
4 product.

5 (c) Consistent with Rule 502(d) of the Federal Rules of Evidence,  
6 any privilege or protection determined not waived by disclosure connected with the  
7 litigation pending before this Court will also not constitute a waiver in any other  
8 federal or state proceeding.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within sixty (60) calendar days after Final Disposition of this action, outside  
11 counsel and all other persons having possession or control of another party’s  
12 Confidential material shall destroy such Confidential material. Each party shall give  
13 written notice of such destruction to outside counsel for the party that designated  
14 such material as Confidential. However, counsel may retain one copy of all  
15 pleadings or other papers filed with the Court for archival purposes. Further, counsel  
16 may maintain one copy of all attorney correspondence and consultant work product,  
17 deposition testimony and deposition exhibits containing Confidential material, and  
18 the trial record, in such a way as to maintain confidentiality.


19 Even after Final Disposition of this litigation, the confidentiality obligations  
20 imposed by this Order shall remain in effect until a designating party agrees  
21 otherwise in writing or a Court order otherwise directs.

1 Final Disposition shall be deemed to be the later of (1) dismissal of all claims  
2 and defenses in this action, with or without prejudice; (2) final judgment herein after  
3 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews  
4 of this action, including the time limits for filing any motions or applications for  
5 extension of time pursuant to applicable law; or (3) the distribution of all proceeds  
6 to any Class certified under Fed. R. Civ. P. 23 as a result of a settlement or judgment.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 PURSUANT TO STIPULATION, IT IS SO ORDERED. The District Court  
9 Clerk is directed to enter this Order and provide copies to counsel.

10 **DATED** March 21, 2018.

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12 ROSANNA MALOUF PETERSON  
13 United States District Judge  
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